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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,165	06/22/2006	Eric Labarriere	12928/10033	4739
23280	7590	08/13/2008		
Davidson, Davidson & Kappel, LLC			EXAMINER	
485 7th Avenue			PALABRICA, RICARDO J	
14th Floor				
New York, NY 10018			ART UNIT	PAPER NUMBER
			3663	
			MAIL DATE	DELIVERY MODE
			08/13/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,165

Applicant(s)

LABARRIERE ET AL.

Examiner

Rick Palabrica

Art Unit

3663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-30 is/are pending in the application.
- 4a) Of the above claim(s) 19-21, 26, 27 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-18, 22-25 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's 6/19/08 Response, which directly amended claims 16 and 24, and traversed the art rejection of claims in the 1/14/08 Office action.

Applicant's arguments have been fully considered but they are not persuasive.

Response to Arguments

2. Applicant argues that applied art Christiansen fail to show the limitation in claim 16, "wherein the maintenance arrangement constitutes an arrangement for longitudinally securing the adjacent longitudinal ends of the fuel rods relative to the terminal end-piece." To support this argument, applicant cites the remark of Christiansen at col. 1, lines 28 to 33, and then alleges that the cited passage shows:

"[t]hat the ends are not longitudinally secured is further clear from the fact that the fuel rods are free to move longitudinally."

The examiner disagrees.

First, the cited passage, which is in the background section of the Christiansen, pertains to a specific (not a generic) condition of his apparatus. It states:

"In order to accommodate the longitudinal (i.e. axial) expansion of the fuel rods during reactor operations, the restraining holes in the lower tie plate which receive the fuel rod end caps are sized so the fuel rod end caps when positioned in their corresponding restraining holes are free to move."

Clearly, the alleged "movement" of the fuel rods occurs only during plant operations, i.e., it is a transitory condition that does not occur at all times.

The claims are directed to an apparatus and not to a process. The claims are directed to an apparatus and NOT to a process. The structural elements of an

apparatus are the physical elements present at the time the apparatus is taken off-the-shelf or removed from the shipping or storage container. In the instant application, the lateral restraints in Christiansen also inherently provides longitudinal restraint when the fuel element is assembled, or loaded into the reactor core prior to operation, or when the assembly is removed from the core during annual refueling or after its useful operating life. Under any one of these three example conditions, the statement in Christiansen cited by applicant does not apply.

The claims recite broadly the so-called arrangement for longitudinally securing the fuel rod ends, and the above example situations cited by the examiner falls within the claim language, as presently set forth. Thus, Christiansen meets the claim limitations, contrary to applicant's allegation.

Second, applicant appears to base his traversal of the applied art on the fact that Christiansen does not provide longitudinal restraint of the fuel rod ends during operation, as evidenced by the passage cited above. Thus, the above-cited features upon which the applicant relies for his traverse are not recited in rejected claims(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Additionally, if said unrecited features are considered by the applicant to be critical to his invention, then such omission would amount to a gap between the essential elements. In this case, the claim(s) would be incomplete and would be rejected under 35 U.S.C. 112, second paragraph. See MPEP § 2172.01.

Note that the same response as above applies to applicant's traverse of the rejection of claim 24, which is the same argument as that used for claim 16.

3. Applicant further argues that Christiansen's legs 54a and 54b are not "feet for support." The examiner disagrees.

First, applicant has not defined the size, shape and manner of attachment of the so-called feet. Absent such definition, the examiner interprets the term broadly and reads it on any and all sizes, shapes and manner of attachment, such as in the case of legs 54a and 54b of Christiansen.

Second, claim 23 recites the limitation associated with the feet as follows:

"feet for support on a lower plate of the core of the nuclear reactor."

This claim is directed to an apparatus that recites "feet" as structural element. The clause, "for support ..." is a statement of intended use that does not serve to patently distinguish the claimed structure over that of the reference, as long as the structure of the cited references is capable of performing the intended use. See MPEP 2111-2115.

See also MPEP 2114 that states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531.

[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525,1528.

As set forth in MPEP 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

The element in the cited reference is capable of being used in the same manner and for the intended or desired use as the claimed invention. Note that it is sufficient to show that said capability exists, which is the case for the cited reference.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 16, 17, 22-25 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Christiansen et al. (U.S. 5,490,191).

The reasons are the same as those stated in section 3 of the 1/14/08 Office action, as further clarified in sections 2 and 3 above, which reasons are herein incorporated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christiansen et al. in view of Matzner et al. (U.S. 5,384,814). Christiansen et al. disclose the applicant's claim limitations except for an anti-debris filter.

The reasons are the same as those stated in section 4 of the 1/14/08 Office action, as further clarified in sections 2 and 3 above, which reasons are herein incorporated.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 571-272-6880. The examiner can normally be reached on 6:00-4:30, Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 11, 2008

/Rick Palabrica/
Primary Examiner, Art Unit 3663